

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

CORTIS, INC.,

Plaintiff,

V.

**CORTISLIM INTERNATIONAL, INC.,
et al.,**

Defendants.

Civil Action No. 3:12-CV-562-P

ORDER

Pursuant to the electronic order filed, August 12, 2013, before the Court is *Plaintiff's Motion for Contempt and for Sanctions, and Brief in Support*, filed August 8, 2013 (doc. 71).

A hearing was conducted concerning the motion on August 30, 2013. All parties appeared in person and through counsel. After consideration of the relevant filings, evidence, oral argument, and applicable law, and for the reasons stated on the record during the hearing, the motion to require the defendants, except Richard A. Sporn (Defendants), to comply with the July 1, 2013 agreed order (doc. 67) is **GRANTED**. Defendants shall serve their privilege log, complete verified answers to the plaintiff's interrogatories, complete responses to the plaintiff's requests for production, all responsive documents (except the two withheld on the basis of privilege and the documents that have not yet been located), **no later than 9:00 a.m. on Tuesday, September 3, 2013**, unless otherwise agreed by the parties. Defendants shall also produce the documents that have been identified on their privilege log to the Court for *in camera inspection* **no later than 9:00 a.m. on Tuesday, September 3, 2013**, unless otherwise agreed by the parties. Defendants shall also produce to the plaintiff the remaining documents that have not yet been located within 21 days of the date of this order, unless otherwise agreed by the parties. All objections to the discovery requests, except privilege, are deemed waived.

Rule 37(b)(2) of the Federal Rules of Civil Procedure provides for sanctions if a party fails to obey an order to provide discovery and for the mandatory assessment of reasonable expenses, including attorney's fees, caused by the failure, unless substantially justified or other circumstances make an award of expenses unjust. FED. R. CIV. P. 37(b)(2)(C). The motion for discovery sanctions under this rule is **GRANTED** in part, and Defendants shall be required to pay the plaintiff's reasonable expenses, including attorney's fees, caused by the failure to comply with the agreed order. Local Rule 7.1(a) and (h) of the Local Civil Rules for the Northern District of Texas require that parties confer before filing an application for attorney's fee and expenses. Accordingly, counsel are hereby directed to meet **face-to-face** and confer about the reasonableness of any requested fees, and also about whether fees for the previous discovery motion that resulted in the agreed order should be awarded. The "face-to-face" requirement is not satisfied by a telephonic conference. Any attorney or party refusing to appear for this meeting or to confer as directed in this Order will be subject to sanctions.

No later than **5:00 p.m. on September 20, 2013**, the parties must notify the Court of the results of the conference in writing. If the disputed issues have been resolved, the movant shall also forward an agreed proposed order in word or wordperfect format to "ramirez_orders@txnd.uscourts.gov". If the parties do not reach an agreement, or if the respondent fails to appear for the conference, the movant may file an application for reasonable expenses and attorney's fees **no later than 5:00 p.m. on September 20, 2013**. The fee application must be supported by documentation evidencing the "lodestar"¹ calculation, including affidavits and billing records, and citations to relevant authorities. *See Tollett v. City of Kemah*, 285 F.3d 357, 367 (5th Cir. 2002) using the "lodestar" method to award attorney's fees under Rule 37). The respondent may file a response **no later than 5:00 p.m. on**

¹ The "lodestar" method is explained in *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983).

September 27, 2013. The response should also address whether fees should be assessed against the party, counsel, or both. Movant may file a reply **no later than 5:00 p.m. on October 4, 2013.**

All relief not expressly awarded herein is hereby denied.

SO ORDERED on this 30th day of August, 2013.



IRMA CARRILLO RAMIREZ
UNITED STATES MAGISTRATE JUDGE